(3)

No. 95-1441

Supreme Court, U.S.
F I L E D
APR 10 1996

In The

Supreme Court of the United States

October Term, 1995

LINDA J. BLESSING, Director, Arizona Department of Economic Security, in her official capacity,

Petitioner,

vs.

CATHY FREESTONE, et al.,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE STATES OF HAWAII, ALABAMA, ALASKA, CALIFORNIA, COLORADO, DELAWARE, FLORIDA, IDAHO, ILLINOIS, IOWA, KANSAS, LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MISSISSIPPI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OKLAHOMA, OREGON, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VERMONT, WASHINGTON, AND WYOMING, THE DISTRICT OF COLUMBIA, AND THE TERRITORIES OF GUAM, AND THE VIRGIN ISLANDS, AS AMICI CURIAE IN SUPPORT OF PETITIONER

MARGERY S. BRONSTER
Attorney General
State of Hawaii

STEVEN S. MICHAELS*
Deputy Attorney General
State of Hawaii
**Counsel of Record*

Department of the Attorney General
425 Queen Street
Honolulu, Hawai'i 96813
(808) 586-1383
Counsel for the State of Hawaii

Other Counsel Listed
Inside Front Cover

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

11 cp

Hon. Jeff Sessions
Attorney General of
Alabama
Office of the Attorney
General
11 South Union Street
Montgomery, AL 36130
(334) 242-7300

Hon. Bruce M. Botelho
Attorney General of
Alaska
Office of the Attorney
General
Post Office Box 110300
Diamond Courthouse
Juneau, AK 99811-3600
(907) 465-2133

Hon. Daniel E. Lungren
Attorney General of
California
Office of the Attorney
General
1515 K Street, Suite 511
Sacramento, CA 95814
(916) 324-5437

Hon. Gale A. Norton
Attorney General of
Colorado
Office of the Attorney
General
Department of Law
1525 Sherman Street
Denver, CO 80203
(303) 866-3052

Hon. M. Jane Brady
Attorney General of
Delaware
Office of the Attorney
General
Carvale State Office
Building
820 North French Street
Wilmington, DE 19801
(302) 577-3838

Hon. Robert A.
Butterworth
Attorney General of
Florida
Office of the Attorney
General
The Capitol
PL 01
Tallahassee, FL
32399-1050
(904) 487-1963

Hon. Alan G. Lance
Attorney General of
Idaho
Office of the Attorney
General
P.O. Box 83720
Boise, ID 83720-1000
(208) 334-2400

Hon. James E. Ryan
Attorney General of
Illinois
State of Illinois
100 W. Randolph Street
12th Floor
Chicago, IL 60601
(312) 814-3000

Hon. Thomas J. Miller
Attorney General of
Iowa
Office of the Attorney
General
Hoover State Office Bldg.
Des Moines, IA 50319
(515) 281-3053

Hon. Carla J. Stovall
Attorney General of
Kansas
Office of the Attorney
General
Judicial Building
301 West Tenth Street
Topeka, KS 66612-1597
(913) 296-2215

Hon. Richard P. Ieyoub
Attorney General of
Louisiana
Office of the Attorney
General
Dept. of Justice
Post Office Box 94095
Baton Rouge, LA 70804-4095
(504) 339-5190

Hon. Andrew Ketterer
Attorney General of
Maine
Office of the Attorney
General
State House Station #6
Augusta, ME 04333
(207) 626-8800

Hon. J. Joseph
Curran, Jr.
Attorney General of
Maryland
Office of the Attorney
General
200 Saint Paul Place
Baltimore, MD
21202-2202
(410) 576-6300

Hon. Scott Harshbarger
Attorney General of
Massachusetts
Office of the Attorney
General
One Ashburton Place
Boston, MA 02108-1698
(617) 727-2200

Hon. Frank J. Kelley
Attorney General of
Michigan
Office of the Attorney
General
Post Office Box 30212
525 West Ottawa Street
Lansing, MI 48909-0212
(517) 373-1110

Hon. Mike Moore
Attorney General of
Mississippi
Office of the Attorney
General
Department of Justice
Post Office Box 220
Jackson, MS 39205-0220
(601) 359-3692

Hon. Joseph P. Mazurek
Attorney General of
Montana
Office of the Attorney
General
Justice Building
P.O. Box 201401
Helena, MT 59620-1401
(406) 444-2026

Hon. Don Stenberg
Attorney General of
Nebraska
Office of the Attorney
General
State Capitol
Post Office Box 98920
Lincoln, NE 68509-8920
(402) 471-2682

Hon. Frankie Sue Del Papa
Attorney General of
Nevada
Office of the Attorney
General
Capitol Complex
Carson City, NV 89710
(702) 687-4170

Hon. Jeffrey R. Howard
Attorney General of
New Hampshire
Office of the Attorney
General
State House Annex
25 Capitol Street
Concord, NH 03301-6397
(603) 271-3658

Hon. Deborah T. Poritz
Attorney General of
New Jersey
Office of the Attorney
General
25 Market Street CN 080
Trenton, NJ 08625
(609) 292-4976

Hon. Dennis C. Vacco
Attorney General of
New York
Office of the Attorney
General
The Capitol, Second
Floor
Albany, NY 12224
(518) 474-7330

Hon. Michael F. Easley
Attorney General of
North Carolina
Office of the Attorney
General
Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
(919) 733-3377

Hon. Heidi Heitkamp
Attorney General of
North Dakota
Office of the Attorney
General
State Capitol
600 East Boulevard
Avenue
Bismarck, ND
58505-0040
(701) 328-2210

Hon. Andrew Edmondson
Attorney General of
Oklahoma
Office of the Attorney
General
State Capitol
2300 North Lincoln
Boulevard
Room 112
Oklahoma City, OK 73105
(405) 521-3921

Hon. Theodore R.
Kulongoski
Attorney General of
Oregon
Office of the Attorney
General
100 Justice Building
Salem, OR 97310
(503) 378-6002

Hon. Jefrey B. Pine
Attorney General of
Rhode Island
72 Pine Street
Providence, RI 02903
(401)274-4400

Hon. Charles Molony
Condon
Attorney General of
South Carolina
Office of the Attorney
General
Rembert C. Dennis
Office Bldg.
Post Office Box 11549
Columbia, SC
29211-1549
(803) 734-3970

Hon. Mark Barnett
Attorney General of
South Dakota
Office of the Attorney
General
500 East Capitol
Pierre, SD 57501-5070
(605) 773-3215

Hon. Charles W. Burson
Attorney General of
Tennessee
Office of the Attorney
General
500 Charlotte Avenue
Nashville, TN 37243
(615) 741-6474

HON. DAN MORALES
Attorney General of
Texas
Office of the Attorney
General
Capitol Station
Post Office Box 12548
Austin, TX 78711-2548
(512) 463-2191

HON. JAN GRAHAM
Attorney General of
Utah
Office of the Attorney
General
State Capitol
Room 236
Salt Lake City, UT
84114-0810
(801) 538-1326

HON. JEFFREY L. AMESTOY
Attorney General of
Vermont
Office of the Attorney
General
109 State Street
Montpelier, VT 05609-1001
(802) 828-3171

HON. CHRISTINE O. GREGOIRE
Attorney General of
Washington
Office of the Attorney
General
P.O. Box 40100
905 Plum Street, Bldg. 3
Olympia, WA 98504-0100
(360) 753-6200

HON. WILLIAM U. HILL
Attorney General of
Wyoming
Office of the Attorney
General
State Capitol Building
Cheyenne, WY 82002
(307) 777-7841

HON. CHARLES F.C. RUFF
Corporation Counsel
District of Columbia
Office of the Corp.
Counsel
441 – 4th Street, NW
Washington, DC 20001
(202) 727-6248

HON. CALVIN E.
HOLLOWAY, SR.
Attorney General of the
Territory of Guam
Office of the Attorney
General
Judicial Center Building
120 West O'Brien Drive
Agana, GU 96910
(671) 475-3324

HON. JULIO A. BRADY
Attorney General of the
Virgin Islands
Office of the Attorney
General
Department of Justice
G.E.R.S. Complex
48B-50C Kronprinsdens
Gade
St. Thomas, VI 00802
(809) 774-5666

INTRODUCTION

The thirty-six amici States, the District of Columbia, and the Territories of Guam and the Virgin Islands urge this Court in the strongest terms to grant the Petition because the Ninth Circuit's decision threatens the timely and effective collection of child support for millions of children who are dependent upon such support for their survival and well being. The decision, issued by two judges of the Nation's largest and most populous circuit, attempts to usurp for the federal judiciary the difficult and sensitive enforcement issues that Congress intentionally left to the States, subject to oversight by the Secretary of Health and Human Services. Amici believe that authorizing suits by individual applicants for child support enforcement services and giving the federal judiciary oversight and enforcement powers when Congress vested the Secretary with such powers will not only place duplicative and possibly conflicting demands upon the States, but also will divert limited State resources without producing any appreciable benefit. Indeed, amici are convinced that instead of improving the delivery of child support enforcement services, the Ninth Circuit's decision will actually impair the effectiveness of child support enforcement programs, thereby harming the very children whom the two-member majority found to be Title IV-D's intended beneficiaries. Amici urge this Court to prevent this harm by granting the Petition to review and reverse the Ninth Circuit's decision.

INTEREST OF THE AMICI CURIAE STATES

Each of the amici States operates, either directly or through its local government, a child support enforcement program pursuant to Title IV-D of the Social Security Act (the Child Support Enforcement Act) as a condition of participating in the federal Aid to Families with Dependent Children (AFDC) program pursuant to Title IV-A of the Social Security Act. As a condition of receiving federal funding for the programs, the States agree to comply with various federal program requirements.

A sharply divided panel of the United States Court of Appeals for the Ninth Circuit has construed Title IV-D as creating rights enforceable in private suits under 42 U.S.C. § 1983 (the Civil Rights Act of 1871) to compel compliance with the federal program requirements. This ruling strikes at the core of separation of powers and federalism principles that have informed this Court's jurisprudence for well over a hundred years. Although the Ninth Circuit decision joins decisions of the First and Eighth Circuits and the Tennessee Supreme Court, it directly conflicts with decisions of the Sixth and Eleventh Circuits.

REASONS FOR GRANTING THE PETITION

The Petition in this case compellingly identifies (i) the irreconcilable conflicts in the decisions of the Circuit Court of Appeals and other lower courts as to whether Title IV-D is privately enforceable in § 1983 actions, (ii) the conflicts between the Ninth Circuit's decision and

prior decisions of this Court, and (iii) the devastating effects that private enforcement actions will have on the efficiency and effectiveness of Title IV-D programs. The amici States wish to amplify several concerns that make this case especially appropriate for review.

First, this Court has always viewed protection of children's interests, which is at the heart of this case, as a critical concern of the States. *See, e.g., Moore v. Sims*, 442 U.S. 415, 435 (1979), *Lassiter v. Department of Social Servs.*, 452 U.S. 18, 27 (1981); *Prince v. Massachusetts*, 321 U.S. 158, 168 (1944). The Ninth Circuit's decision and other decisions that have employed similar reasoning have wrested away from the States their traditional prerogative of deciding how best to enforce child support obligations.

Second, the Ninth Circuit's decision also wrests from the States their traditional prerogative to decide how best to allocate limited State resources among competing priorities and places allocation decisions in the hands of the federal judiciary under circumstances in which no constitutional violations have been alleged. The loss of this prerogative in conjunction with the States' decision to participate in the federal AFDC program violates separation of powers and federalism principles because the States were not unambiguously notified that their participation would subject them to suit by individual applicants for child support enforcement services. The States were therefore deprived of the opportunity to decide whether the burden of being subject to a multitude of private suits would outweigh the benefit of receiving federal AFDC funds.

Third, it is wrong, and contrary to this Court's jurisprudence, to assume that Congress delegated a second layer of oversight responsibility to private litigants and the federal courts. Indeed, in *Suter v. Artist M.*, 503 U.S. 347 (1992), this Court made very clear that enforcement under 42 U.S.C. § 1983 was not to be permitted unless Congress had "unambiguously conferred" private enforcement rights in the underlying statute at issue. The Court of Appeals in this case, like several other appellate courts, has wrongly ignored this test and the principles of federalism and judicial restraint that should properly color the way in which *Suter*'s analysis should be applied in this setting.

Fourth, and perhaps most importantly, the two-member majority essentially rewrote what Congress enacted. For instance, is adopting a substantial compliance standard as a prerequisite to retaining federal funding for Title IV-D programs, Congress recognized that state child support enforcement agencies could not possibly provide every applicant with every service one hundred percent of the time. By authorizing individual actions to enforce Title IV-D, the Ninth Circuit has in effect authorized the federal courts to find that the States must totally rather than substantially comply with Title IV-D's statutory and regulatory provisions. This is a result that neither Congress nor the Secretary intended and that will have a disastrous impact on State finances. Moreover, by creating a private right of action enforceable in federal court, the two-member majority rewrote the remedial scheme Congress envisioned when it vested the Secretary with authority over an elaborate oversight and enforcement program. Two federal judges should not be allowed to

rewrite the remedial scheme that Congress passed and the President approved. *Cf. Seminole Tribe of Florida v. Florida*, No. 94-12, 1996 WL 134309 (U.S. March 27, 1996) ("[W]here Congress has prescribed a detailed remedial scheme for the enforcement against a State of a statutorily created right, a court should hesitate before casting aside [Eleventh Amendment] limitations and permitting an action against a state officer based upon *Ex parte Young*.")

CONCLUSION

The Court should grant the Petition for Writ of Certioari.

Dated: Honolulu, Hawaii, April 10, 1996.

MARGERY S. BRONSTER
Attorney General
State of Hawaii

STEVEN S. MICHAELS*
Deputy Attorney General
State of Hawaii
**Counsel of Record*

Department of the
Attorney General
425 Queen Street
Honolulu, Hawai'i 96813
(808) 586-1383
Counsel for the
State of Hawaii

Other Counsel Listed
Inside Front Cover